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ILLINOIS COMMERCE COMMISSION

STATE OF ILLINOIS  
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ORIGINAL

ILLINOIS-AMERICAN WATER COMPANY )  
 )  
Proposed general increase in water and )  
wastewater rates )

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CHIEF CLERK'S OFFICE

**VILLAGE OF BOLINGBROOK REPLY BRIEF WITH  
RESPECT TO EXCEPTIONS TO THE PROPOSED ORDER**

NOW COMES the Intervenor Village of Bolingbrook ("Bolingbrook"), by its attorneys Moss and Bloomberg, Ltd., and as its Reply Brief with respect to exceptions to the proposed order in the proceedings, sates as follows:

I.

**ILLINOIS-AMERICAN HAS FAILED TO PROVE THAT DEFERRED  
SECURITY COSTS WERE MANDATED BY LAW**

In its Brief on Exceptions, Illinois-American Water Company ("IAWC") asserts that *Citizens Utilities Board v. Illinois Commerce Commission*, 166 Ill.2d 111, 651 N.E.2d 1089, 209 Ill.Dec. 641 (1995), is controlling precedent with respect to deferred security costs. See IAWC's Brief on Exceptions at pp. 5-33. As Bolingbrook has previously argued, *Citizens Utilities Board* does not support IAWC's claims. See Reply Brief and Argument of the Intervenor Village of Bolingbrook at pp. 8-10. In *Citizens Utilities Board*, the Commission had instituted a generic proceeding concerning rate-making treatment of expenses that gas and electric utilities would be liable for under state and federal environmental laws. The expenditures were mandated by law in order to remediate coal tar waste at former sites used for the manufacture of gas from coal.

Under the environmental laws,<sup>1</sup> the utilities would be liable for the remediation expenses if the manufactured gas plant was operated by a predecessor utility, if they owned the site or if prior operation of the manufactured gas plant was performed by the utility itself. *Id.* 651 N.E.2d at 1093. Given the mandatory nature of the environmental laws in issue, the Court ruled that the coal tar remediation costs were recoverable from current ratepayers. As the Court held:

As both the Commission and the utilities note, expenses commonly incurred to comply with *the mandate of Federal and State law* have historically been recoverable from ratepayers. For example, income taxes are a legally mandated cost of doing business and are recoverable from ratepayers as a component of a utility's revenue requirement. (*Citizens Utilities Co. v. Illinois Commerce Comm'n* (1988), 124 Ill.2d 195, 201, 124 Ill.Dec. 529, 529 N.E.2d 510.).

\* \* \*

Similarly, the record in the instant case contains extensive evidence that utilities *are required* to incur coal-tar cleanup expenses under CERCLA and similar Illinois environmental laws. *Coal-tar cleanup expenses benefit a utility's ratepayers because payment of this legally mandated cost allows a utility to remain in business and to continue to provide service to its customers.* We agree with the appellate court that MGP remediation costs can be viewed as conferring benefits on utility customers. We do not believe that the Commission exceeded its authority in recognizing coal-tar costs as recoverable from ratepayers.

*Id.*, 651 N.E.2d at 1095-96  
(Emphasis supplied)

Thus, the holding in *Citizens Utilities Board* hinged on whether the expenses were mandated by law. Despite IAWC's argument to the contrary, it is apparent that the deferred security costs in issue here have never been mandated by law.

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<sup>1</sup>The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601 *et seq.*) and 415 ILCS 5/22.2 *et seq.*

While IAWC argues that the deferred security costs were necessary to comply with "environmental" laws, that argument could be made with respect to any personnel cost or other operating cost of a utility. None of these costs, however, are specifically mandated by environmental or other laws. Moreover, as Staff has argued, IAWC's personnel expenses were approved in the last rate order. To readjust those previously approved costs by including a deferred security cost item in this rate proceedings would effectively count those costs twice and would further constitute retroactive ratemaking. *A. Finkl & Sons Co. v. Illinois Commerce Commission*, 250 Ill.App.3d 317, 620 N.E.2d 1141, 1146-1151, 189 Ill.Dec. 824 (1993), and cases cited therein (ordering refunds when rates are too high and surcharges when rates are too low violates test year principles and the rule against retroactive ratemaking). In short, the holding in *Citizens Utilities Board* is a narrow exception to the test year rule and is only applicable if the expenditures in issue have been mandated by law.

The controlling precedent with respect to the deferred security cost issue is *Business and Professional People v. Illinois Commerce Commission*, 146 Ill.2d 175, 585 N.E.2d 1032, 166 Ill.Dec. 10 (1991) ("*BPPI*"). In *BPPI*, as in the present case, the deferred costs in issue were not expenses incurred to achieve compliance with a legal mandate. The deferred charges in issue were deferred depreciation expense, deferred decommissioning expense and deferred financial carrying costs. *Id.* 585 N.E.2d at 1059. The Court held that test year principles applied to each of these charges. With respect to the deferred expense categories (i.e., depreciation and decommissioning), the Court ruled that allowing such expenses would violate test year principles. *Id.* 585 N.E.2d at 1059-60. The deferred security costs, which IAWC now seeks to include in rates, clearly fall into

the same category. Inclusion of IAWC's deferred security costs would violate test year principles and should, therefore, be denied.

## II.

### STAFF'S ALLOCATION OF TEST YEAR SECURITY COSTS UTILIZES THE ONLY APPROPRIATE METHODOLOGY

IAWC and certain Intervenors have argued that test year security costs should be allocated to all districts by rate base percentage, rather than to the district where the costs are actually incurred. *See* IAWC Brief on Exceptions at pp. 53-55. Under IAWC's proposed methodology, districts that do not incur security-related labor costs, such as the Chicago Metro Water District, would nonetheless have to pay for them.


IAWC records all of its personnel salaries and wages for laborers at the District level. R. C. 182. The only exceptions are employees who work in a division office or in a corporate office. R.C. 182. Based on this practice, security-related labor costs, like any other labor costs, should be allocated to the District which incurs the expense, as proposed by the Staff. Isolating a single category of labor-related expense, and treating it differently, is fundamentally unfair to ratepayers in Districts which do not incur these costs.

The proposed order correctly adopts the Staff's allocation methodology, which is fair to ratepayers and consistent with the treatment of other personnel costs.

## CONCLUSION

For these reasons, the Intervenor Village of Bolingbrook respectfully submits that IAWC's exceptions to the proposed order with respect to deferred security costs and the allocation of test year security costs should be denied. The Village of Bolingbrook further submits, for the reasons set forth in its previous Brief on Exceptions, that Bolingbrook's exceptions should be incorporated into the proposed order.

Respectfully submitted,

  
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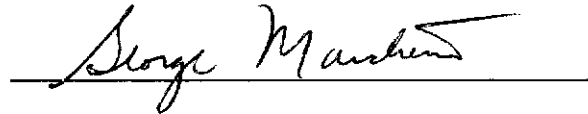
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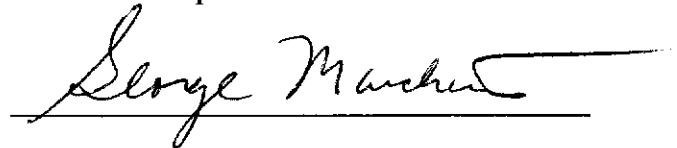
TO: See attached Service List.

Please be advised that on the 11<sup>th</sup> day of July, 2003, I caused an original and three copies of the accompanying **VILLAGE OF BOLINGBROOK REPLY BRIEF WITH RESPECT TO EXCEPTIONS TO THE PROPOSED ORDER** to be filed with the Clerk of the Illinois Commerce Commission by mailing same, U.S. mail, postage prepaid, to 527 East Capitol Avenue, Springfield, Illinois 62794-9280 and by electronically transmitting same to the e-mail addresses or facsimile numbers listed on the attached Service List.



**CERTIFICATE OF SERVICE**

I hereby certify that I caused the attached **VILLAGE OF BOLINGBROOK REPLY BRIEF WITH RESPECT TO EXCEPTIONS TO THE PROPOSED ORDER** to be served by electronic transmission (e-mail or fax, as indicated) of same to all parties on the attached Service List, on the 11<sup>th</sup> day of July, 2003.



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